



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Aumann, Inc.

File: B-245898.3; B-245898.4

Date: July 22, 1992

Alan M. Grayson, Esq., for the protester.
Neil S. Lowenstein, Esq., Vandeventer, Black, Meredith &
Martin, for D.M. Potts Corporation, an interested party.
John Pettit, Esq., and Capt. John F. Ruoff, Department of
the Air Force, for the agency.
Linda C. Glass, Esq., Andrew T. Pogany, Esq., and Michael R.
Golden, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Award to technically superior, higher priced offeror is proper where award on that basis is consistent with the solicitation evaluation criteria and the agency reasonably determined that the superior technical merit of successful proposal was sufficiently significant to justify award at higher cost.

DECISION

Aumann, Inc. protests the award of a contract to D.M. Potts Corporation under request for proposals (RFP) No. F08650-91-R-0008, issued by the Department of the Air Force as a total small business set-aside for grounds maintenance services at Patrick Air Force Base. In its initial and supplemental protests, Aumann essentially contends that the Air Force did not follow the RFP evaluation criteria in evaluating proposals.¹

We deny the protests.

¹Aumann initially also argued that Pott's offer should have been rejected as unbalanced and that the technical evaluation board was unqualified to evaluate grounds maintenance proposals. The Air Force responded to these allegations in its report explaining that Pott's offer was not unbalanced and that the evaluators were qualified. Aumann offered no further argument or evidence in support of these contentions and, thus, we find the firm has abandoned these issues. See The Big Picture Co., Inc., B-220859.2, Mar. 4, 1986, 66-1 CPD ¶ 218.

The RFP provided for the award of a fixed-priced-award-fee requirements contract to the responsible offeror whose offer was technically acceptable and would be most advantageous to the government. The RFP provided that proposals would be evaluated against the following broad areas listed in descending order of importance: management/technical and cost. For purposes of the evaluation, the management area was divided into the following factors: company data, manning, management and organization structure and phase-in-plan. The technical area was divided into the following factors: available equipment, job accomplishment, completion of routine/urgent/emergency work order requests, special events plan, obtaining materials, safety control plan and administration reports/timeliness. The RFP further provided that while the cost area was of lesser importance, the cost area would be a substantial factor and would be evaluated to determine the credibility and realism of the offeror's technical and management proposal and the completeness and reasonableness of the proposal.

The RFP also stated that a performance risk assessment would be conducted based on the offeror's present and past performance as it related to the probability of successfully accomplishing the requirement; offerors were required to submit "information (your company capabilities) on contracts that you consider relevant in demonstrating your ability to perform the proposed Grounds Maintenance Services. . . ."

Ten proposals were received by the amended July 22, 1991, closing date. On September 19, award was made, without discussions, to Potts, as the most advantageous offeror. On September 27, Aumann protested the award to our Office. In its protest, Aumann argued that the award was improper for the following reasons: (1) award was made based on an improper technical evaluation; (2) award was made without discussions or best and final offers (BAFO); (3) award was made without proper consideration of cost; and (4) Potts had submitted an unbalanced bid. On October 16, after a debriefing, Aumann supplemented its protest and argued that the contract awarded to Potts did not strictly conform to the agency's requirements as stated in the RFP. As a result of Aumann's protest, a stop-work order was issued to Potts on October 7. On October 28, the agency decided to conduct discussions, reevaluate proposals, and request BAFOs.² Aumann subsequently withdrew its protest on October 28, and our Office dismissed the protest on that same date.

²The agency states that its primary reason for opening discussions was that it discovered that one of three evaluators assigned a rating of "unsatisfactory" to one item in Potts's management/technical proposal, a fact that was not articulated in the evaluation summary.

All ten offerors were determined to be in the competitive range, and, on January 13, 1992, discussion letters were sent to these offerors. Four offerors did not respond to the discussion letters and were eliminated from the competitive range. Responses to discussion letters were received on January 24 and evaluated by the agency. The six remaining offerors were determined to be in the competitive range, and BAFOs were requested by letters dated February 27. The six offerors submitted BAFOs by March 9.

The agency's evaluation of BAFOs resulted in the management/technical proposals of Potts and U.S. Contracting being rated virtually equal in value and superior to all others. Potts's price was lower than U.S. Contracting's. Aumann was ranked fifth of six technically but proposed a lower price (by approximately 10 percent) than Potts.

Aumann was considered to have the second most advantageous proposal based on its offering an overall acceptable management/technical proposal at a fair, reasonable, and realistic price. Specifically, while the Air Force found that Aumann's proposal presented a good scenario for job accomplishment, and Aumann's special events plan indicated familiarity with Air Force events, the evaluators found that Aumann presented little data for accomplishment of work order requests and acquisition of materials. This suggested to the agency that Aumann did not fully anticipate all requirements for this contract. Aumann was also downgraded for its failure to clearly indicate how required reports would be prepared or submitted. The proposal risk factor for Aumann was medium. Two telephone inquiries were conducted with Aumann's references, who rated Aumann as excellent. As a result, Aumann's performance risk factor was rated low. For purposes of assisting the selection official, the evaluators then combined the technical considerations (proposal risk) with the past performance considerations to arrive at an overall risk rating. Aumann received an overall rating of medium.

On the other hand, the proposal risk factor for Potts was low. The Air Force found that Potts's proposed manning, as well as its equipment for the project, accurately anticipated the scope of the work. Potts's proposal was found to have a well thought out management and organizational structure that detailed the functions, responsibilities and authorities for performing work and included the assignment of skilled personnel to accomplish specialized tasks. With respect to past performance, four references of Potts responded to the agency's questionnaire. Two rated Potts as excellent, one rated Potts as marginal, and one had no comment. As a result, the past performance risk for Potts was moderate. The agency states that because Potts presented a very thorough and detailed proposal which

addressed all topics relative to grounds maintenance, and made allowances for a multitude of contingencies, Potts's overall risk rating was low.

The contracting officer reviewed the evaluation results and selected Potts as the responsible offeror whose offer conformed with the requirements of the RFP and whose selection was most advantageous to the government. The agency concluded that the difference in price between Potts and Aumann was insufficient to overcome Potts's superior management/technical ranking or the risk associated with Aumann's proposed approach to the work.

On March 20, Aumann requested that we reinstate its protest. Aumann now essentially argues that the evaluation was improper because the agency performed an improper performance risk assessment relating to references. Aumann supplemented its protest on May 13 and argues that Potts failed to provide past performance information requested by the agency, and allegedly misled the agency concerning its past performance.

We will examine an agency's technical evaluations to ensure that they are reasonable and consistent with the evaluation criteria. See Wellington Assocs., Inc., B-228168.2, Jan. 28, 1988, 88-1 CPD ¶ 85. The fact the protester disagrees with the agency does not itself render the evaluation unreasonable. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450. Further, in a negotiated procurement, there is no requirement that award be made on the basis of lowest cost unless the RFP so specifies. Spectra Technology, Inc.; Westinghouse Elec. Corp., B-232565; B-232565.2, Jan. 10, 1989, 89-1 CPD ¶ 23. Cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the established evaluation factors. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. Awards to offerors with higher technical scores and higher costs are proper so long as the result is consistent with the evaluation criteria and the procuring agency has determined that the technical difference is sufficiently significant to outweigh the cost difference. University of Dayton Research Inst., B-227115, Aug. 19, 1987, 87-2 CPD ¶ 178.

We find that the agency's evaluation was reasonable and in conformance with the evaluation scheme set forth in the RFP. As previously stated, the record shows that the management/technical criteria was the most important evaluation factor. While Aumann maintains that it submitted the superior proposal, the record simply does not support Aumann's claim. The record shows, and we find, that Aumann's proposal lacked

details concerning the accomplishment of work order requests, one of its important requirements, as well as reports, and failed to demonstrate an understanding of the requirements.

For example, with respect to work order requests, Aumann in its initial proposal simply stated that the Contract Manager will follow guidelines in Section C-5 for Job Order requests and would utilize manpower from the employees dedicated to perform work orders. When asked during discussions to explain how it intended to respond to and complete work order requests, Aumann response was that "Job/work orders will be filled at this contract site in a manner approved by the contracting officer." With respect to reports, Aumann in its initial proposal stated that the contract manager would complete the required administrative reports accurately, adequately and on a timely basis. When asked to explain how it intended to process the required reports and deliver them to the government, Aumann stated that the required reports would be submitted in accordance with instructions outlines in Technical Exhibit 4, which was DD Form 1423--Contract Data Requirements List. Thus, Aumann's proposal contained no detailed explanation or description of how it intended to complete work order requests or process the required reports. In fact, Aumann's proposal was merely a restatement of RFP terms.

In contrast, as previously stated, Potts submitted a more detailed proposal that was consistently rated superior to Aumann in a majority of the evaluation factors by all of the evaluators. Potts's proposal contained "extensive detail" on response times and execution of work order requests and fully demonstrated an understanding of the requirements. Further, the record shows that the evaluators reasonably found that Potts's "reporting plan indicates a reliable system of accountability."

In sum, the technical evaluation was reasonable based upon the proposals submitted, and the protester has not shown otherwise. Aumann's proposal simply was not evaluated to be as good as Potts, and the agency reasonably determined that it would receive better services from Potts at the premium price. Thus, the award to Potts was consistent with the RFP scheme.

Concerning the evaluation, the protester also argues that Potts failed to provide past performance information requested by the agency, and actually misled the agency concerning its past performance. The protester maintains that Potts's proposal omitted key past performance locations where Potts had performed poorly and that this misrepresentation had a material effect on evaluations since

Potts received "outstanding" ratings in both the Management and Organizational Structure and Company Data section of its proposal.

Section L of the RFP required offerors to submit a past performance volume with their proposal. Offerors were to submit information on contracts that the offeror considered relevant in demonstrating its ability to perform the requirement. The RFP stated that this was a significant evaluation area and the government would use data provided by each offeror in this volume and data obtained from other sources in the development of performance risk assessments. The RFP also indicated the possibility of the agency using a preaward survey to complete the performance risk assessments.

As previously stated, Potts provided information on four Air Force contracts and one Navy contract where it performed grounds maintenance type services. Four of those references responded to the government questionnaire, two rating Potts's performance as excellent, one as marginal and one responding with no comment. As a result, Potts received a performance risk assessment of moderate. The agency, after receipt of the protester's supplemental protest, contacted the references not provided by Potts and was informed that the first option years were not exercised under two contracts because the requirement was not defined accurately and under another contract the initial option was not exercised because of unsatisfactory performance.

We do not believe the record here demonstrates that Potts misrepresented its past performance to the agency. The RFP only required offerors to provide a list of relevant contracts, it did not require identification of all past ground maintenance contracts. The references listed by Potts did in fact give the agency a broad spectrum of Potts's past performance and even with the addition of the three omitted contracts, a performance risk assessment rating of moderate was still reasonable.

Aumann also complains that while the agency's initial performance risk assessment rating for it was "low," the assessment was changed after discussions to "high" because the evaluator stated that no references of Aumann responded to the government questionnaire. Aumann contends that this erroneous risk assessment carried through directly to the source selection decision.

The record contains a document from the BAFO evaluation assessing Aumann as a "high" performance risk. Earlier, during initial evaluation, the protester's performance risk was rated "low." The contracting officer states that the BAFO evaluation document was erroneous and was not relied

upon by her as the source selection official to select the successful offeror. In short, she considered and evaluated Aumann as always having a low past performance risk. We then have no basis in the record to question her evaluation and selection decision.

Finally, Aumann on May 21, in its comments to the agency report, raised additional objections to the agency's evaluation of proposals.³ For example, Aumann alleges that Potts failed to propose key personnel to meet RFP requirements for current employment. This argument apparently is based on the inclusion in the RFP of a resume format that included a category "Present Assignment with your company." However, the RFP simply required offerors to submit resumes on key personnel and provided a format containing the kind of information it needed with respect to proposed key personnel. There was no requirement in the RFP that proposed key personnel be current employees of the offeror.

Aumann also argues that in performing its cost analysis, the agency failed completely to apply the cost escalation used by the agency and by Aumann to the Potts proposal and that the agency failed to allocate all of Potts's overhead and general and administration expenses to this work.

The agency performed a price analysis to determine the reasonableness of Potts's price. In doing so, the agency compared the price offered by the offeror to its management/technical proposal to determine the credibility and realism of the offeror's management/technical proposal as well as its completeness and reasonableness. The agency cost estimate and the agency manning estimate were used as yardsticks to evaluate the realism and reasonableness of the costs proposed. The agency concluded that the price offered by Potts was fair, realistic and reasonable.

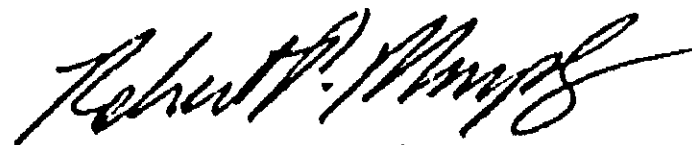
Where fixed-price contracts are solicited, "cost realism" ordinarily is not considered in the evaluation since a firm, fixed-price contract provides for a definite price and this contract type places upon the contractor the risk and responsibility for all contract costs and resulting profit or loss. Corporate Health Examiners, Inc., B-220399.2, June 16, 1986, 86-1 CPD ¶ 552. However, as here, agencies,

³Aumann, in its initial protest, argued that Potts's project manager did not have 5 years of relevant experience in Florida as required by the RFP. The agency specifically responded to this issue and Aumann did not offer any additional arguments with respect to this issue. We therefore deem it to have been abandoned. The Big Picture Co., Inc., supra.

in their discretion, may provide for a cost realism analysis in the solicitation of firm, fixed-price proposals for such purposes as measuring an offeror's understanding of the solicitation requirements. Id.

The Air Force performed a price analysis to determine the reasonableness of Potts's price, and the evaluators specifically found that Potts understood the requirement and proposed an approach that provided an acceptable risk of performance. On this record, we have no basis for finding the evaluation to be unreasonable.

Accordingly, the protests are denied.


for James F. Hinchman
General Counsel